

Appl. No. 10/701,039
Atty. Docket No. 5922R2CCC
Amdt. dated March 20, 2006
Reply to Office Action of December 21, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1-19 are pending in the present application. No additional claims fee is believed to be due.

Double Patenting

The Examiner has rejected Claims 1, 2, 4, 6, 7, 13, 16 and 17 for obviousness-type double patenting over:

Claims 1, 2, 5, 7, 8, 14, 16, 17, 19, and 24 of U.S. Patent No. 6,194,062;

Claims 1, 2, 4, 7, 8, and 9 of U.S. Patent No. 6,818,292;

Claims 9, 10, 14, 15, 18, 41, 50, 52, 55, 58, 66, 95, 97, 98, 100, 101, 105, 106, and 108 of

co-pending Patent Application No. 09/715,586;

Claims 3, 4, 10, 12-14, 17, 38-41, 47, 49-51, 53, 54, 86-89, 97-99, and 102 co-pending

Patent Application No. 09/716,740; and

Claims 1, 7, 10, and 16 of co-pending Patent Application No. 10/003,900.

Pursuant to M.P.E.P. §1490, Applicants will submit an appropriate Terminal Disclaimer compliant with 35 U.S.C. §253 and 37 C.F.R. §3.73 at such a time as allowable subject matter has been identified which remains subject to a double patenting rejection.

Rejections Under 35 U.S.C. §102/§103

Claims 1, 2, 4-9, and 11-17 have been rejected under 35 U.S.C. §102(b), as being anticipated by, or in the alternative, under 35 U.S.C. §103(a), as obvious over Wilbur, U.S. Patent No. 2,338,749. Applicants respectfully traverse this rejection. The cited reference provides no teaching or suggestion relating to the proportion of the adhesive portion of the sheet that should be present in the form of protrusions. Since the reference provides no teaching regarding a range of protrusion amount or any indication that such a feature is of any significance, the reference cannot be found to have taught or suggested

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that a sheet having protrusions in the range of 30% to 70% of the sheet area as provided by the rejection.

The Office provides that where the claimed and prior art products are shown to be identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. See MPEP § 2112.01. In the instant case, the Office presumes the structure to be identical. Applicant submits that there is no explicit teaching of the claimed structure, that the reference teaches away from the claimed structure and that a supposition that the structures are identical cannot serve as the basis for finding them to be so. The reference is silent as to the mode of producing the materials described so the mode of production cannot be said to be factually the same since the mode of the art is unknown. Nothing has been established by this line of argument by the Office.

Applicant claims a wrapper having protrusions covering between 30 and 70 percent by area of the sheet, Wilbur teaches wrappers of unknown length shown to have a small area at each end of the wrapper having protrusions over a portion of the area at the end and no protrusions between the ends. Nothing in the reference teaches or suggests that between 30 and 70 percent by area of the entire sheet may desirably be covered with protrusions. None of the figures and nothing in the description provides for a material having the claimed limitation.

The Office points out that in the absence of factual support, an attorney's arguments may not take the place of evidence. The only facts and evidence associated with the reference are those plainly available in it. There is no product, other than the illustrated and described embodiments to evaluate with regard to the extent of the protrusions. The reference does not teach or suggest anything regarding the percentage by area of the protrusions, this is a fact and not argument. The reference does not teach or suggest protrusions occupying between 30 and 70 % by area of the sheet, also a fact and not argument. The reference describes and illustrates wrappers of indeterminate length with no regard to the relative proportion of the length to be given over to protrusions, fact not argument. The reference teaches wrappers having significant portions with no protrusions, including illustrating embodiments having an unknown quantity of the wrapper without protrusions excerpted from the figures, this is fact and not argument. The

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Office may not substitute a presumption for a teaching that is not present or suggested by the reference. None of the described and illustrated embodiments of the reference necessarily possess protrusions occupying between 30 and 70 percent by area of the sheet.

Claim 3 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Wilbur (U.S. Patent No. 2,338,749), in view of Reed, et al. (U.S. Patent No. 4,054,697). As provided, the Wilbur reference fails to anticipate or render obvious the invention as set forth in the claims as amended. The addition of the Reed reference fails to cure the deficiencies of the Wilbur reference as to Claim 1 and as Claim 3 depends from Claim 1 this rejection should be reconsidered and withdrawn.

Claim 10 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Wilbur (U.S. Patent No. 2,338,749), in view of the admitted prior art. As provided, the Wilbur reference fails to anticipate or render obvious the invention as set forth in the claims as amended. The addition of the admitted art reference fails to cure the deficiencies of the Wilbur reference as to Claim 1 and as Claim 10 depends from Claim 1 this rejection should be reconsidered and withdrawn.

Claims 18 and 19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Wilbur (U.S. Patent No. 2,338,749), in view of Reed, et al. (U.S. Patent No. 4,054,697), and Kovac (U.S. Patent No. 3,819,467). As provided, the Wilbur reference fails to anticipate or render obvious the invention as set forth in the claims as amended. The addition of the Reed and Kovac references fail to cure the deficiencies of the Wilbur reference as to Claim 1 and as Claims 18 and 19 depend from Claim 1 this rejection should be reconsidered and withdrawn.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC §102(b). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of

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the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-19 is respectfully requested.

Respectfully submitted,

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By 

Signature

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